SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 503.

THE UNITED STATES, APPELLANT,

vs.

LEE YEN TAI.

ON CERTIFICATES FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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1 United States circuit court of appeals, second circuit.

THE UNITED STATES, APPELLANT,
vs.
LEE YEN TAI.

Appeal from order of U. S. district court, southern district of New York, discharging prisoner upon habeas corpus.

This cause coming on for hearing before this court, a question of law arose, concerning which this court desires the instructions of the Supreme Court for its proper decision.

The facts out of which the question arose are as follows:

On the sixth day of October, 1900, Lee Gin Moy came into the United States from China, being then and there a Chinese person and laborer, and not being a diplomatic or other officer of the Chinese, or any other government, and without producing the certificate required of a Chinese person seeking to enter the United States. On the eighth day of the same month he was arrested under a warrant issued by a United States commissioner for the northern district of New York. Upon a hearing before the commissioner it was held that said Lee Gin Moy came from China, that he had not made it appear to the commissioner
2 that he was a subject or a citizen of some other country than China, that he was a Chinese person and laborer, had unlawfully entered the United States, and was not lawfully entitled to be or remain in the United States. Thereupon said commissioner made an order for his deportation. While the marshal had him in custody and in process of deportation, habeas corpus was issued by the district court, and upon a hearing the petitioner was discharged upon giving bail for his appearance as may be determined by any final order on appeal. Appeal was duly taken to this court.

Upon argument being had it appeared that a question of law was presented, the answer to which involved the construction of a treaty made under the authority of the United States, which question is as follows:

Question. Is section 12 of "An act to execute certain treaty stipulations relating to the Chinese, approved May 6th, 1882," as amended by section 3 of the amendatory act of July 5, 1884, repealed by the treaty or convention with China of December 8, 1894?

In accordance with the provisions of section 6 of the act of Congress of March 3, 1891, entitled "An act to establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," the foregoing question of law is by the court of appeals of the second circuit certified to the Supreme Court of the United States; and

3 It is ordered that the clerk transmit the foregoing certificate under the seal of this court to the clerk of the Supreme Court of the United States at the city of Washington.

Dated December 17th, 1901.

WM. J. WALLACE,
Circuit Judge.
E. HENRY LACOMBE,
Circuit Judge.
W. E. TOWNSEND,
District Judge.

4 United States circuit court of appeals, second circuit.

I, William Parkin, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing certificate in the case entitled The United States vs. Lee Yen Tai was duly filed and entered of record in my office by order of said court on the 17th day of December, 1901, and as directed by said court the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

Dated New York, December 17th, 1901.

[SEAL.] WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

5 (Indorsed:) United States circuit court of appeals, second circuit. The United States, appellant, vs. Lee Yen Tai. Certificate. Received. Office Supreme Court of U. S., Dec. 18, 1901. United States circuit court of appeals, second circuit. Filed Dec. 17, 1901. William Parkin, clerk.

6 (Indorsed:) Certificate. File No., 18356, U. S. C. C. of appeals, 2nd circuit. Term No., 503. The United States, appellant, vs. Lee Yen Tai. Filed December 18, 1901.

7 United States circuit court of appeals, second circuit.

THE UNITED STATES, APPELLANT,
vs.
LEE YEN TAI.

Appeal from order of U. S. district court, southern district of New York, discharging prisoner upon habeas corpus.

This cause coming on for hearing before this court, a question of law arose concerning which this court desires the instructions of the Supreme Court for its proper decision.

The facts out of which the question arose are as follows:

On the eighth day of October, 1900, complaint was made under oath before a commissioner of the United States for the northern district of New York, charging that Lee Gin Moy, alias Lee Yen Tai, on the sixth day of October, A. D. 1900, "did unlawfully come into the United States from China, he being then and there a Chinese person and laborer, and not being a diplomatic or other officer of the Chinese or any other Government, and without producing the certificate required of Chinese persons seeking to enter the United States, and that he was not entitled to be or remain within the United States." A warrant for said defendant's arrest was issued by said United States commissioner on the same day, and after a hearing before said commissioner he issued a warrant of deportation in which the following adjudication was placed on record:

8 "I now hereby find and adjudge that the said Lee Gin Moy is a Chinese person and laborer; that he is not a diplomatic or other officer

of the Chinese, or of any other Government, and unlawfully entered the United States as charged in said complaint; and I further adjudge him, said Lee Gin Moy, guilty of not being lawfully entitled to be or remain in the United States." Said defendant's immediate removal to China by the United States marshal for said northern district of New York upon said warrant was ordered by said commissioner. While the marshal had him in custody, and in process of deportation, habeas corpus was issued by the district court for the southern district of New York. The petition upon which the writ of habeas corpus issued averred, among other things, that said Lee Yen Tai was a merchant having an interest of one thousand dollars ($1,000) in the capital of the firm, and is not a laborer, and has not been a laborer, but is a merchant and member of a firm specified in the petition, and has always been a merchant since he had any status.

Before the district court the prisoner was produced, and a return made which included the aforesaid warrant of deportation; said return was traversed and no evidence as to defendant's status other than the allegations in the aforesaid petition and return was before the district court. Upon the hearing in the district court the petitioner was discharged upon giving bail for his appearance as may be determined by any final order on appeal. Appeal was duly taken by the United States to this court.

Upon argument being had, it appeared that a question of law
9 was presented, the answer to which involved the construction of a treaty made under the authority of the United States, which question is as follows:

Question. Is section 12 of "An act to execute certain treaty stipulations relating to the Chinese, approved May 6th, 1882," as amended by the amendatory act of July 5, 1884, and continued in force by section 1 of the act of May 5th, 1892, repealed by the treaty or convention with China proclaimed December 8th, 1894?

In accordance with the provisions of section 6 of the act of March 3, 1891, entitled "An act to establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," the foregoing question of law is by the court of appeals of the second circuit certified by this amended certificate to the Supreme Court of the United States; and

It is ordered that the clerk transfer the foregoing certificate under the seal of this court to the clerk of the Supreme Court of the United States at the city of Washington.

Dated December 20th, 1901.

WM. J. WALLACE,
Circuit Judge.
E. HENRY LACOMBE,
Circuit Judge.
W. K. TOWNSEND,
District Judge.

10 United States circuit court of appeals, second circuit.

I, William Parkin, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing amended certificate in the case entitled the United States against Lee Yen Tai was

duly filed and entered of record in my office by order of said court on the 20th day of December, 1901, and as directed by said court the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

Dated New York, December 20th, 1901.

[SEAL.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

11 (Indorsed:) United States circuit court of appeals, second circuit. United States v. Lee Yen Tai. Amended certificate. Received office Supreme Court of U. S., Dec. 21, 1901. United States circuit court of appeals, second circuit. Filed Dec. 20, 1901, William Parkin, clerk.

(Indorsement on cover:) File No. 18356. U. S. C. C. of appeals, 2nd circuit. Term No. 503. The United States, appellant, vs. Lee Yen Tai. Amended certificate. Filed December 23rd, 1901.

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